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January 9, 2003

VIA ECFS

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
CY-B402
Washington, D.C. 20554

Re: *Consolidated Application of Verizon Maryland, Inc., Verizon Washington, D.C., Inc., and Verizon West Virginia, Inc., for Authority to Provide In-Region, InterLATA Services In Maryland, Washington, D.C., and West Virginia,* WC Docket No. 02-384

Dear Ms. Dortch:

Enclosed for filing in the above-referenced proceeding pursuant to the Commission's December 19, 2002 Public Notice Requesting Comments are the Comments of Starpower Communications, LLC and US LEC Corp.

Should you have any questions concerning this filing, please do not hesitate to call me.

Respectfully submitted,

Robin Cohn (by HB)

Robin F. Cohn

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by Verizon Maryland Inc.,	)	
Verizon Washington, D.C., Inc., Verizon	)	WC Docket No. 02-384
West Virginia Inc., Bell Atlantic	)	
Communications, Inc. (d/b/a Verizon	)	
Long Distance), NYNEX Long Distance	)	
Company (d/b/a Verizon Enterprise Solutions),	)	
Verizon Global Networks Inc., and Verizon	)	
Select Services Inc., for Authorization To	)	
Provide In-Region, InterLATA Services in	)	
Maryland, Washington, D.C., and West Virginia	)	

COMMENTS OF STARPOWER COMMUNICATIONS, LLC AND US LEC CORP.

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Dated: January 9, 2003

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SUMMARY

Verizon's application for Section 271 authority in Maryland, Washington D.C., and West Virginia should be denied because Verizon has failed to demonstrate that its markets are irreversibly open to competitors. Significantly, Verizon continues to discriminate against CLECs with regard to its interconnection practices involving Geographically Relevant Interconnection Points ("GRIPs"), and in the provision of unbundled network elements ("UNEs") by unjustifiably charging higher special access rates for Common Channel Signaling Links that should be priced as UNEs. In addition, Verizon's attempt to restrict and limit access to dedicated transport as a UNE must be halted, and its entrance facilities rate structure must be reviewed to assess whether Verizon is unlawfully increasing the cost of dedicated transport by imposing inappropriate charges. Verizon also continues to deny CLECs reciprocal compensation for virtual foreign exchange traffic despite this Commission's rulings on this issue, and subjects CLECs to unacceptable delays when number portability is requested for customers who wish to switch from Verizon voice service in situations where the customer is also receiving DSL service.

Given the strong reservations about the propriety of Verizon's Section 271 aspirations expressed by the Maryland Public Service Commission, and the fact that the District of Columbia Public Service Commission has not released a decision in its pending Section 271 proceeding, but has recently commented on Verizon's inappropriate stance regarding UNE rates, the Commission should exercise great caution in its review of the Application. The numerous deficiencies identified by the Maryland Public Service Commission and those described herein demonstrate that the award of Section 271 authority at this time would be premature.

Furthermore, the steady erosion of the separation between checklist compliance and satisfaction of the public interest standard must also be reversed. Given the state of the competitive telecommunications industry, and concerted BOC efforts to thwart the local competition provisions of the Communications Act, granting Verizon Section 271 authority is plainly contrary to the public interest, and the Application should be denied.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Verizon Washington, D.C., Inc., Verizon	)	WC Docket No. 02-384
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Provide In-Region, InterLATA Services in	)	
Maryland, Washington, D.C., and West Virginia	)	

COMMENTS OF STARPOWER COMMUNICATIONS LLC AND US LEC CORP.

Starpower Communications, LLC ("Starpower") and US LEC Corp. ("US LEC") submit these comments concerning the Application by Verizon Maryland Inc., Verizon Washington, D.C., Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia ("Application").[1] For the reasons stated in these comments, the Commission should deny the Application.

[1] *Comments Requested on the Joint Application by Verizon Maryland, Verizon Washington, D.C., and Verizon West Virginia for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, Public Notice, WC Docket No. 02-384, DA 02-3511, released Dec. 19, 2002.

I. VERIZON'S GRIPS POLICY VIOLATES CHECKLIST ITEM 1

A. Legal Standard

To satisfy its obligations under Checklist Item 1 – Interconnection – an RBOC must provide equal-in-quality interconnection on terms and conditions that are just, reasonable, and non-discriminatory in accordance with the requirements of sections 251(c)(2).[2] Pursuant to 47 U.S.C. § 251(c)(2)(B),[3] Verizon has a "duty to provide for the facilities of any requesting telecommunications carrier, interconnection with the local exchange carrier's network ...at any technically feasible point within the carrier's network." The FCC has stated that the competing local carrier, not the incumbent, has the right to choose the technically feasible interconnection points on the incumbent's network.[4] Moreover,

> [s]ection 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent's LEC's network at any technically feasible point on that network rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points. Section 251(c)(2) lowers the barrier for competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic.[5]

Accordingly, Verizon may not dictate that a CLEC use a specific tandem switch or end office for interconnection if the CLEC chooses or has already established another technically feasible

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2 *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, FCC 00-238 at ¶ 65 (June 30, 2000) ("*SBC TX 271Order*"). Verizon "retains at all times the ultimate burden of proof that its application satisfies all of the requirements of Section 271." *Id.* at ¶ 47.

3 47 U.S.C. § 251(c)(2)(B).

4 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket Nos. 96-98 and 95-185, FCC 96-325, at ¶ 209 ("*Local Competition Order*") (rel. Aug. 8, 1996) (subsequent history omitted). The Supreme Court recently upheld the FCC's forward-looking UNE pricing methodology. *See also Verizon Communications, Inc. et. al vs. FCC et. al*, Nos. 00-511 (May 13, 2002).

5 *Id.*

interconnection point.[6] Pursuant to these regulations, Verizon is obligated to offer CLECs the right to choose interconnection at either a single or multiple points on its network subject only to the limits of technical feasibility.

Despite the statutory requirement and this Commission's rules, Verizon has attempted over the last few years to force CLECs to acquiesce to its Geographically Relevant Interconnection Points ("GRIPs") network architecture proposal in interconnection agreement negotiations. GRIPs violates the Commission's rules and governing law.[7] Under the GRIPs scheme, CLECs are denied the right to select without financial penalty their chosen or existing technically feasible points of interconnection on Verizon's network, including a single point of interconnection within a LATA. Instead, Verizon attempts to force CLECs to designate multiple points of interconnection in a LATA or to impose transport costs on those CLECs who designate only one point per LATA. Thus, where adopted, GRIPs would result in CLECs being forced to incur unnecessary costs to build multiple interconnection points within a LATA, or to pay for Verizon's costs of transporting its originating traffic to the CLEC's point of interconnection. Under Verizon's GRIPs policy, CLECs are also required to interconnect either at the Verizon tandem or end office switch serving the Verizon called party.[8] Verizon thereby seeks both to determine unilaterally the point of interconnection and to shift the costs of originating its traffic onto CLECs.[9]

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6 *See Id.* at ¶¶ 209-212.

7 *See* 47 C.F.R. § 51.321(a); *Local Competition Order*, ¶209.

8 *In the Matter of the Review by the Commission Into Verizon Maryland, Inc.'s Compliance with the Conditions of 47 U.S.C. § 271(c)*, Maryland PSC Case No. 8921, Brief of AT&T Communications of Maryland Inc. at 20 (Nov. 18, 2002) ("AT&T MD Brief").

9 AT&T MD Brief at 21. AT&T noted in the Virginia arbitration that Verizon's GRIP proposals would increase its local interconnection costs by between $1,800,000 and $3,079,000 annually. AT&T MD Brief at 21, n. 59.

In its *Virginia Arbitration Order*, this Commission flatly rejected Verizon's position regarding both GRIPs and the related virtually geographically relevant interconnection points ("VGRIPs") proposal. The Commission stated:

> [w]e find that the petitioners' proposed language more closely conforms to our existing rules and precedent than do Verizon's proposals. Verizon's interconnection proposals require competitive LECs to bear Verizon's costs of delivering its originating traffic to a point of interconnection beyond the Verizon-specified financial demarcation point, the IP. Specifically, under Verizon's proposed language, the competitive LEC's financial responsibility for the further transport of Verizon's traffic to the competitive LEC's point of interconnection and onto the competitive LEC's network would begin at the Verizon-designated competitive LEC IP, rather than the point of interconnection. By contrast, under the petitioners' proposals, each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC. The petitioners' proposals, therefore, are more consistent with the Commission's rules for section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network; they are also more consistent with the right of competitive LECs to interconnect at any technically feasible point.[10]

Verizon blithely ignores the Commission's rulings and continues to attempt to impose GRIPs in Maryland, the District of Columbia, and West Virginia. Verizon's refusal to accept and implement the Commission's decisions forces CLECs to arbitrate repeatedly an issue that has already been decided. In effect, Verizon is creating its own virtual appeal process which forces CLECs to expend considerable resources in re-litigating these issues. By failing to accept its financial responsibility for transporting traffic to the single point of interconnection, and thereby forcing a CLEC to utilize

[10] *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order (Wireline Comp. Bureau, rel. July 17, 2002) ("*Virginia Arbitration Order*") at ¶ 53.

multiple points of interconnection, Verizon fails to meet the requirements of Checklist Item 1.

B. Status of GRIPs in Maryland

The Maryland Public Service Commission ("PSC") has also issued a firm rejection of GRIPs and VGRIPs. As an explicit condition of its finding that Verizon's application was in compliance with the competitive checklist, the Maryland PSC directed Verizon to "not include GRIPs or VGRIPs provisions in any Model Interconnection Agreement in use in Maryland unless expressly authorized by this Commission or the FCC."[11] The condition was a reaffirmation of the Maryland PSC's prior interconnection policies, which included "the requirement of one point of interconnection per access tandem serving area, with the general policy that carriers are responsible for their own traffic up to the point of interconnection."[12]

Despite these strong repudiations of GRIPs and VGRIPs at both the federal and state levels, Verizon does not deny that it is continuing to attempt to force GRIPs on CLECs. It simply claims now, however, that GRIPs is "not the only form of network interconnection available to CLECs in Maryland."[13] Verizon asserts that it has modified its Model

[11] *In the Matter of the Review By the Commission Into Verizon Maryland Inc.'s Compliance with the Conditions of 47 U.S.C. § 271(c)*, Maryland PSC Case No. 8921, December 16, 2002 Letter from the Commissioners, Maryland Public Service Commission to William R. Roberts, President, Verizon Maryland, Inc. (*"Maryland Consultative Report"*) at 5.

[12] *In the Matter of the Arbitration of Sprint Communications Company, L.P. vs. Verizon Maryland, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Maryland PSC Case No. 8887, Order at 29 (Oct. 24, 2001).

[13] *Application by Verizon Maryland Inc., Verizon Washington, D.C., Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, WC Docket No. 02-284 (Dec. 19, 2002) ("Application"), Declaration of Paul A. Lacouture and Virginia P. Ruesterholz Regarding Maryland at ¶ 33.

Interconnection Agreement to provide for a single point of interconnection per LATA.[14] This claim, even if true, does not support Verizon's argument that it is not mandating GRIPs, much less that it is in compliance with Checklist Item 1.

In regard to Verizon's Model Interconnection Agreement, and in the context of the Maryland PSC proceeding addressing Verizon's Section 271 application, AT&T demonstrated how Verizon retained the essence of GRIPs in its Model Interconnection Agreement without using the GRIPs nomenclature.[15] AT&T noted that the interconnection language in Verizon's Maryland Model Interconnection Agreement is essentially indistinguishable from the provisions this Commission found to be unacceptable in the *Virginia Arbitration Order*.[16]

For example, Section 2.2.4 of the Model Interconnection Agreement requires the CLEC to establish "at the technically feasible Point(s) of Interconnection ["POI"] on Verizon's network in a LATA, separate Interconnection Trunk group(s) between such POI(s) and each Verizon Tandem in a LATA with a subtending End Office(s) to which ***CLEC*** originates calls for Verizon to terminate."[17] Thus, a CLEC is effectively required to interconnect at multiple points in a LATA. Section 2.2.5 of the Model Agreement requires interconnection at each Verizon end office at which the volume of traffic exceeds the equivalent of one DS1 and/or 200,000 minutes

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14 Lacouture/Ruesterholz MD Declaration at ¶ 33.

15 *In the Matter of the Review by the Commission Into Verizon Maryland, Inc.'s Compliance with the Conditions of 47 U.S.C. § 271(c)*, Maryland PSC Case No. 8921, Brief of AT&T Communications of Maryland Inc. at 19-25 ("AT&T MD Brief") (Nov. 18, 2002).

16 AT&T MD Brief at 23.

17 Application, Appendix P, Tab 2 at 60, Interconnection Attachment, Section 2.2.4.

of use in a single month.[18] The *Virginia Arbitration* provisions did not contain this mandatory end office interconnection requirement.[19]

Section 2.2.6 of the Model Interconnection Agreement limits the number of interconnection trunks between a CLEC POI and a Verizon tandem to 240.[20] If this number is exceeded, or reasonably can be expected to be exceeded, the CLEC must establish trunks to Verizon end offices, thereby increasing the number of interconnection points. Once again, the *Virginia Arbitration* provisions did not contain this mandatory end office interconnection requirement.[21] Finally, Section 1 provides that a technically feasible POI must be on Verizon's network and not a CLEC switch or wire center or transport facility.[22] The *Virginia Arbitration* provisions call for interconnection at the AT&T switch unless an alternative arrangement is reached.[23] Thus, one can see how Verizon retains the essence of GRIPs without mentioning GRIPs at all. CLECs can still be forced to interconnect at numerous points on Verizon's network under the Model Interconnection Agreement. Verizon continues to dictate points of interconnection and seeks to transfer financial responsibility for originating transport of its customers' calls to CLECs.

US LEC also has had the opportunity to review Verizon's Model Interconnection Agreement and discuss its provisions with Verizon's affiliate, Verizon South, in the context of its pending arbitration in the State of Florida.[24] As US LEC understands Verizon's position, under

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18 Application, Appendix P, Tab 2 at 60, Interconnection Attachment, Section 2.2.5.

19 AT&T MD Brief at 23.

20 Application, MD Appendix P, Tab 2 at 60, Interconnection Attachment, Section 2.2.6.

21 AT&T MD Brief at 23.

22 Application, MD Appendix P, Tab 2 at 60, Interconnection Attachment, Section 1.

23 AT&T MD Brief at 24.

24 The Interconnection Attachment of the Model Agreement submitted here is identical to the same section of the Model Agreement Verizon South presented to US LEC in Florida.

the Model Interconnection Agreement, the CLEC's POI must be located at Verizon's tandem serving wire center or Verizon will assess transport charges to carry traffic from the POI designated by the CLEC to the Verizon tandem(s). In addition, with respect to Sections 2.2.5 and 2.2.6, it is Verizon's position that a CLEC can not hand-off traffic destined for a Verizon end office via a dedicated trunk at the CLEC designated POI and expect to pay the lower end office reciprocal compensation rate, unless it also establishes an additional POI at the Verizon end office. And the insult does not end there; Verizon also demands that the CLEC accept Verizon's traffic that originates from this additional end office POI. Therefore, even assuming *arguendo* that a CLEC agrees to the "DS1 equivalent argument" for the sole purpose of diversifying its network and offloading Verizon's tandem, Verizon insists that end offices to which these additional trunks are deployed automatically become additional points of interconnection at which Verizon can deliver its originating traffic to the CLEC. This Verizon position blatantly violates the rules requiring Verizon to bear financial responsibility for delivering traffic its customers originate to a single point of interconnection per LATA designated by the CLEC.

Moreover, Verizon's Model Interconnection Agreement also fails to comply with the resolution of Issues I-2/VII-5 in the *Virginia Arbitration Order*. This is because Verizon's Model Interconnection Agreement contains no cost recovery provisions for the transport facility provided by the CLEC from the POI to the CLEC's switch. For example, in the case of the new end office POI example noted above, Verizon expects the CLEC to haul Verizon's originating traffic across Verizon's local calling areas, past the POI designated by the CLEC, to the CLEC's switch for termination, and for all of this, the CLEC is entitled to bill Verizon only the applicable per minute-of-use terminating compensation rate (end office or tandem), rather than the distance-sensitive dedicated transport rate that the CLEC is entitled to under the *Virginia Arbitration*

Order. In other words, Verizon refuses to recognize its obligation to "pay [CLECs] for transporting Verizon-originated traffic from the place where [CLECs] interconnect with Verizon's network to the [CLEC's] network."[25]

Thus, it is quite clear that, despite the Maryland PSC's stern directive to remove any GRIPs or VGRIPs provisions, such language remains in the Model Interconnection Agreement for Maryland that Verizon filed with this application.[26] The fact that Verizon is desperately clinging to its GRIPs network architecture despite this Commission's pronouncements and those of the Maryland PSC demonstrates the patently anticompetitive nature of Verizon's actions. It forces CLECs to have to negotiate to remove unlawful provisions, and presumably to make concessions to have these provisions removed, unless the CLEC is willing to devote significant resources to arbitrate the issue. There is simply no place for such unlawful provisions in a model interconnection agreement.

Verizon's stubborn refusal to comply with the Maryland Commission's mandate to remove GRIPs and VGRIPs provisions from its Maryland interconnection agreements is also illustrated by at least one pending interconnection arbitration. US LEC and Verizon are currently awaiting a decision from a Maryland arbitrator in Case 8922. In that arbitration, Verizon proposed its VGRIPs language, and it has made no effort to revise its position or to withdraw that language. This is just one more example of Verizon's litigious nature and shows the lengths to which Verizon will go to impose litigation costs on its competitors.

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25 *Virginia Arbitration Order at* ¶ 68.

26 Application, MD Appendix P, Tab 4.

C. Status of GRIPs in the District of Columbia

Because the relevant language of Sections 1 and 2.2.4 to 2.2.6 of the Interconnection Attachment of the D.C. Model Interconnection Agreement is the same as the Maryland Model Interconnection Agreement, the same arguments apply and are hereby incorporated as if fully restated herein.

Verizon also proffers an interconnection agreement with WorldCom as an example of an agreement that does not contain GRIPs or VGRIPs.[27] The WorldCom agreement, however, contains Verizon's artificial distinction between a POI and an interconnection point ("IP"). Verizon terms a POI as the location where the parties facilities physically interconnect, but the IP is used as the location where the carriers' financial responsibilities begin and end.[28] The POI/IP scheme is the essence of Verizon's GRIP policy because it mandates POIs and shifts Verizon's originating transport costs onto CLECs.[29] In the *Virginia Arbitration Order*, this Commission explicitly rejected "Verizon's proposal to establish an IP that is distinct from the POI."[30] Yet this is the very artificial distinction the network architecture encapsulated in the agreement proffered by Verizon is based upon. Verizon has noted that the essence of GRIPs is "strictly a matter of who pays and how much," and this issue rests on the sharp distinction Verizon makes between the physical and financial points of interconnection.[31] Verizon, as shall be shown in the next section, conceded in the West Virginia proceeding that the network architecture in this

[27] Application, Declaration of Paul A. Lacouture and Virginia P. Ruesterholz Regarding Washington D.C. at ¶ 33.

[28] AT&T MD Brief at 21.

[29] AT&T MD Brief at 21-22.

[30] *Virginia Arbitration Order* at ¶ 66.

agreement, while allowing for a single point of interconnection in a LATA, creates a compensation system similar to GRIPs. The Commission will find that below the surface of many, if not all of, Verizon's interconnection agreements lurks the policies of GRIPs. This is why the Commission should mandate the language it ordered in the *Virginia Arbitration Order*. Furthermore, unlike in Maryland, the D.C. Commission has not issued a ruling on GRIPs or VGRIPs policies in the context of its Section 271 proceeding, and it has yet to rule on US LEC's arbitration over the issue. Thus, there is even less assurance in the District that Verizon will not try and force CLECs to accede to GRIPs or VGRIPs. This counsels all the more for mandating the incorporation of the language from the *Virginia Arbitration Order* as a condition of finding checklist compliance.

D. Status of GRIPs in West Virginia

Because the West Virginia Model Interconnection Agreement contains the same relevant interconnection language as the Maryland Model Interconnection Agreement, the arguments set forth above in regard to the Maryland Model Interconnection Agreement are incorporated as if fully restated herein.

Verizon offers as examples three interconnection agreements that purportedly do not contain GRIPs provisions. The three agreements are all the same interconnection agreement between Bell Atlantic and MCI, which AT&T and FiberNet subsequently adopted.[32] Verizon itself conceded in the West Virginia proceeding that while the agreement may provide for one

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[31] *Petition in the matter of Verizon West Virginia Inc.'s Compliance with conditions set forth in 47 U.S.C. § 271(c)*, Case No. 02-0809-T-P, Recommended Findings of Fact and Conclusions of Law Submitted by AT&T Communications of West Virginia, Inc. at ¶ 7, n. 56 (Nov. 26, 2002).

[32] *In the Matter of the Inquiry Into Verizon West Virginia Inc.'s Compliance With the Conditions Set Forth In 47 U.S.C. § 271(c)*, Case No. 02-0809-T-P, Proposed Order and Consultative Report of Verizon West Virginia, Inc. at 13, n. 10 (Nov. 26, 2002).

physical point of interconnection per LATA, it allows MCI (now WorldCom) to charge Bell Atlantic (now Verizon West Virginia) only the lower end-office rate for reciprocal compensation. Under the agreement, "MCI had to pay Bell Atlantic for transport between the physical POI and the so-called interconnection point (or "IP") that is used to determine reciprocal compensation payments."[33] Verizon admits that the MCI/Bell Atlantic agreement established "a similar concept in some respects" to GRIPs.[34] Thus, Verizon is simply engaged in inappropriate word play in proffering its agreements that purportedly do not include GRIPs-like requirements.

E. Verizon Must Commit to Conformance With the *Virginia Arbitration Order* To Be In Compliance With Checklist Item 1

The Commission should require Verizon to state explicitly that it will both permanently abandon its GRIPs and VGRIPs positions (in both name and substance) in Maryland, the District of Columbia and West Virginia, and will modify its Model Interconnection Agreement language on interconnection to conform to the language the Commission ordered in the *Virginia Arbitration Order*.[35]

Verizon's continuing use of GRIP-esque propositions in its Model Interconnection Agreements demonstrates that Verizon will not relinquish its position on GRIPs and VGRIPs unless the Commission requires it to do so. The Commission in the *Virginia Arbitration* had an opportunity to consider Verizon's GRIPs and VGRIPs policies at length and found that they did not conform to its existing rules. Verizon now has no justifiable excuse to attempt to continue to include GRIPs or VGRIPs provisions in its interconnection agreements. US LEC noted in its

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33 Proposed Order and Consultative Report of Verizon West Virginia, Inc. at 13, n. 10.

34 Proposed Order and Consultative Report of Verizon West Virginia, Inc. at 13, n. 10

Reply Comments in this Commission's *Virginia 271* proceeding that Verizon appears to be intransigently clinging to GRIPs and VGRIPs despite the Commission's rulings. Specifically, on August 1, 2002, Verizon issued an industry letter to CLECs in Virginia informing them that it was in the process of developing interconnection agreements in accordance with the Commission's decision in the *Virginia Arbitration Order*, and in the interim, "CLECs in Verizon's former Bell Atlantic service territory in Virginia also may request in interconnection negotiations those service offerings and arrangements that the FCC found in the *VA Consolidated Arbitration* to be required under applicable law, but which are not currently incorporated in any existing interconnection agreement in Virginia."[36] Verizon then proceeded to list the service offerings and arrangements that it was making available. The attachment did not reference the Commission's resolutions on the GRIPs, VGRIPs, and virtual foreign exchange ("FX") issues.

In addition, on September 6, 2002, Verizon filed a letter with the Maryland Public Service Commission in its arbitration proceeding with US LEC that specified that the 16 service offerings and arrangements listed in the attachment to the August 1st letter "do *not* include the acceptance of financial responsibility for transporting traffic to a single IP per LATA (Issues 1 and 2), nor the payment of reciprocal compensation on Virtual FX traffic (Issue 6)."[37]

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35 *Id.* at 2.

36 *Application by Verizon Virginia, Inc. for Authorization to Provide In-region, InterLATA Services In Virginia,* WC Docket No. 02-214, Reply Comments of US LEC Corp., Exhibit A, August 1, 2002 Verizon Industry Letter at 1 (Sept. 12, 2002).

37 *In the Matter of the Arbitration of US LEC of Maryland, Inc. v. Verizon Maryland Inc. Pursuant to 47 U.S.C. § 252(b),* Maryland Public Service Commission Case 8922, September 6, 2002 Letter from Scott H. Angstreich, Counsel for Verizon Maryland Inc. to Felicia L. Greer, Maryland Public Service Commission at 1. (emphasis in original).

In short, there is currently no indication that Verizon is willing to accept the financial responsibility for transporting traffic to a single IP per LATA, which is what the Commission requires under its rules, nor is there any indication that Verizon will cease its attempts to impose GRIPs upon CLECs. Until Verizon provides an indication that it is willing to conform to the Commission's rules, it cannot be found to be in compliance with Checklist Item 1. No matter how much Verizon attempts to convey to this Commission that it is offering alternatives to GRIPs and VGRIPs, the reality is that CLECs are being forced to arbitrate to avoid Verizon's unlawful GRIPs and VGRIPs policies. Congress surely did not intend the Section 252 arbitration process to be used as a tool to drive down competition by forcing competitors to expend precious resources to be able to exercise rights to which they are lawfully entitled. Verizon's anticompetitive interconnection policies contravene the very heart of Checklist Item 1.

II. VERIZON'S REFUSAL TO PROVIDE STARPOWER WITH COMMON CHANNEL SIGNALING LINKS AT UNE RATES AMOUNTS TO A VIOLATION OF CHECKLIST ITEMS 2 (ACCESS TO UNES) AND 10 (DATABASES AND ASSOCIATED SIGNALING)

Section 271(c)(2)(B)(ii)[38] of the Act requires an RBOC seeking authority to provide in-region interLATA services to provide nondiscriminatory access to network elements in accordance with Sections 251(c)(3) and 252(d)(1). Section 251(c)(3) requires Verizon to provide access to UNEs at rates, terms and conditions that are just, reasonable and nondiscriminatory.[39] Section 252(d)(1) requires that a state commission's determination of the just and reasonable rates for network elements shall be based on the cost of providing the

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[38] 47 U.S.C. § 271(c)(2)(B)(ii).

[39] 47 U.S.C. § 251(c)(3).

network elements, shall be nondiscriminatory, and may include a reasonable profit.[40] Pursuant to this statutory mandate, the FCC has determined that prices for UNEs must be forward-looking and based on total element long-run incremental cost ("TELRIC").[41]

As explained in Starpower's filings with the Maryland Public Service Commission in Case No. 8921, the CCS link is a network element used to transmit routing messages between switches and call-related databases, which return customer information or instructions for call routing to the switch via the CCS link.[42] The CCS link transmits signaling information, such as call path or other routing information, in packets from a local switch to a signaling transfer point ("STP"), which is a high-capacity packet switch. In this way, a call can be routed from one switch, which sends a series of signaling messages establishing a call path over the voice network to another switch, through the CCS link.[43] The STP then switches the packets onto other links, which extend to other switches, databases, and STPS, according to the address information contained in the packet.[44]

CLEC access to signaling networks, including CCS links and STPs, is essential to the ability to provide telecommunications services to consumers. Without such access, or without access on a nondiscriminatory basis, a CLEC would be unable to or impaired in its ability to

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40 *Id.* § 252(d)(1).

41 *See Local Competition Order* at ¶¶ 672-78.

42 *In the Matter of the Review by the Commission Into Verizon Maryland Inc.'s Compliance with the Conditions of 47 U.S.C.* § 271(c), Brief of Starpower Communications, LLC (Md. PSC Case No. 8921) at 4. *See* Testimony of Joseph Kahl on Behalf of Starpower Communications, LLC (Md. PSC Case No. 8921). The Maryland PSC did not directly address this issue in its consultative report, and Starpower requests that the Commission do so here.

43 *Id.* at 3.

44 *Id.*

route calls on its network.[45] Accordingly, the FCC determined in its *UNE Remand Order* that signaling networks, including CCS links, are network elements that ILECs, like Verizon, must provide to CLECs on an unbundled basis.[46]

As explained in Starpower's filings in Case 8921, Starpower has submitted numerous requests to Verizon for CCS links.[47] When placing the orders to Verizon, Starpower has included its local/CLEC Carrier Identification ("CIC") code and noted that the facilities are being ordered for local traffic.[48] Although Verizon ultimately provisioned the facilities requested by Starpower, it has charged Starpower for the facilities at special access rates rather than at UNE rates.[49] Verizon has persistently maintained its practice of refusing to bill at the UNE rates despite Starpower's repeated requests to be billed at UNE rates.[50] In the majority of instances in which Starpower has identified improper billing, Verizon either refused to credit Starpower for the difference between the UNE rate and the special access rate, indicating that the special access rate is appropriate for the facilities, or failed to respond to Starpower's claims in the first instance.[51] In the few cases in which Verizon has provided Starpower with some credits, it has taken several months and required multiple inquiries from Starpower before any such credits were obtained.[52] Verizon's refusal to properly bill Starpower for the CCS links at issue is wholly

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45 *Id.* at 4.

46 *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 96-98, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*") at ¶383. *See* Starpower Brief at 5.

47 Starpower Md. Case 8921 Brief at 5.

48 *Id.*

49 *Id.*

50 *Id.* at 5.

51 *Id.*

52 *Id.*

unjustified because Starpower employs the facilities for local traffic, and Verizon's conduct plainly amounts to violation of Checklist Items 2 and 10.

Verizon's billing practices also appear to contravene the requirements of Checklist Items 2 and 10 because they are discriminatory. It is Starpower's understanding that Verizon uses the same kind of facilities Starpower has ordered for the same purposes and in the same manner in order to provide service to its retail customers.[53] Verizon does not treat its own Common Channel Signaling links as special access facilities.[54] Yet when Starpower orders these facilities, Verizon regards them as special access facilities and bills Starpower as such.[55] Consequently, Verizon is treating Starpower differently than Verizon treats itself when it utilizes Common Channel Signaling for its own retail customers.[56] Verizon cannot demonstrate that it has met its checklist obligations as long as it continues to bill Starpower at special access rates for UNEs and employs the discriminatory conduct described herein and in Starpower's filings in Case No. 8921.

In the Application, and in response to Starpower's filings testimony in Case 8921, Verizon offered several excuses for its failure to properly bill Starpower for the facilities at UNE rates in lieu of special access rates. As explained below, Verizon's claims do not adequately rebut the evidence submitted by Starpower or provide any reasonable basis for Verizon's persistent refusal to correctly bill Starpower for the CCS links at UNE rates.

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53 *Id.* at 6.

54 *Id.*

55 *Id.*

56 *Id.*

First, Verizon's Application asserts that its billing of the CCS links at special access rates is appropriate because Starpower ordered the links as special access facilities.[57] This claim is incorrect, as Starpower ordered the facilities as UNEs[58] and is therefore entitled to be billed at UNE rates.[59]

Verizon next attempts to deflect the Commission's attention from the merits of the issue by claiming that the situation is a billing dispute that is not appropriately resolved in a 271 proceeding.[60] This contention is nothing more than a red herring that should be rejected by the Commission. Because Verizon's erroneous billing of Common Channel Signaling links clearly violates its obligation to provide Starpower with such UNEs at rates, terms and conditions that are just, reasonable, and nondiscriminatory, Verizon's conduct constitutes a clear violation of Checklist Items 2 and 10. Verizon does not specify what it *would* consider a suitable issue for Commission consideration in this case, and it should not be permitted to evade responsibility for its improper actions by claiming that Starpower's concerns are not properly before the Commission. The Commission should therefore require Verizon to remedy the problem before any favorable action on the Application is taken.

Finally, Verizon asserts that it "is willing to work with Starpower to convert its signaling links to UNEs, assuming they qualify for conversion."[61] Verizon made a similar contention

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57 Application at 76, n. 59.

58 Starpower Brief in Md. Case No. 8921 at 6-7. As detailed in Starpower's Brief, an exception to this procedure took place with respect to certain facilities ordered before Verizon had implemented a mechanism for CLECs to order the facilities at UNE rates. Starpower Brief in Case 8921 at 7. Starpower subsequently requested that it be charged for those facilities at UNE rates rather than at special access rates. *Id.*

59 Starpower Brief in Md. Case 8921 at 7.

60 Application at 76, n. 59.

61 Application at 76, n. 59.

during Case 8921.[62] Although Starpower is more than willing to cooperate with Verizon to resolve the billing errors, to date, Verizon has generally been unresponsive to Starpower's repeated suggestions that the parties resolve their billing issues. Starpower submits that Verizon's informal assurance in its Application that it will work with Starpower at some future date to resolve the persistent billing problems experienced by Starpower is not a sufficient basis to find that Verizon complies with Checklist Items 2 and 10.

III. VERIZON'S ATTEMPTS TO LIMIT ACCESS TO DEDICATED TRANSPORT AS A UNE AND TO ASSESS ANY IMPROPER ENTRANCE FACILITY RATES MUST BE TERMINATED BEFORE SECTION 271 AUTHORITY IS CONSIDERED

Starpower is concerned about two issues related to Verizon's provision of unbundled dedicated transport that must be resolved before the Application can be granted. First, Verizon's attempts to limit the availability of dedicated transport as a UNE must be halted. Second, Verizon's rate structure for entrance facilities charges should be examined to ensure that it does not hinder CLECs from obtaining access to dedicated transport in violation of Checklist Items 2 and 5 by including the assessment of unwarranted charges at rates that exceed TELRIC rates.

A. Dedicated Transport Must Be Made Available at UNE Rates, and Without a Collocation Requirement

Although the Act and the Commission's rules entitle CLECs to purchase cost-based facilities for interconnection purposes, Verizon resists selling UNE Dedicated Transport to CLECs for interconnection trunks. In several states Verizon refuses to provide Starpower or its affiliate RCN Telecom Services with cost-based interconnection facilities, requiring them to order such facilities from Verizon's interstate special access tariff. Thus, Verizon seeks to

[62] *See* Verizon Reply Checklist Declaration at para. 65-66, Case 8921 (Verizon "stands ready to work with Starpower to convert its existing configuration(s) from access to UNEs if the configuration meets the

require CLECs to purchase interconnection facilities at higher rates that do not comply with the cost-based pricing requirements of Section 252(d)(1) and Commission rules. For example, among other charges, Verizon imposes special access port termination charges on circuits used for local interconnection in the District of Columbia. As RCN and others have shown in comments filed previously in CC Docket 96-98 and as explained in comments filed in the Commission's *Triennial Review Proceeding*, purchasing special access instead of cost-based transport could increase a competitors' costs by a factor ranging to over seven, depending on the market at issue.[63] Thus, by requiring a CLEC to purchase special access instead of cost-based UNE dedicated transport for interconnection facilities, an ILEC such as Verizon can create a substantial cost disadvantage for its competitors and discriminate in favor of its own operations. The Commission should act decisively and finally in this proceeding to end Verizon's unlawful and harmful practice of refusing to provide UNE dedicated transport for interconnection.

Verizon's practices were recently rejected in the *Virginia Arbitration Order*, where the Commission adopted AT&T's proposal to incorporate language in the parties' interconnection agreement stating that it may purchase UNE dedicated transport at UNE rates.[64] The Commission emphasized that "Verizon has no basis for requiring AT&T to order dedicated transport from its access tariffs" in lieu of providing it at UNE rates.[65] In order to preclude this

requirements of an unbundled element").

[63] *See, e.g.*, RCN Comments in CC Docket No. 96-98, Declaration of Joseph Kahl, T 18 (filed June 11, 2001) (special access could increase costs by factor of 5); WorldCom Comments in CC Docket No. 96-98, Exhibit G (filed June 11, 2001) (special access could increase costs by up to 397%); AES Communications Comments in CC Docket No. 96-98, Exhibit 1 (filed June 11, 2001) (special access could increase costs by over 700%). *See also* Comments of RCN Telecom Services, Inc., *et al*, CC Docket 01-338, 96-98, and 98-147 (filed April 5, 2002) at 67-70).

[64] *Virginia Arbitration Order* at ¶ 215.

[65] *Id.* at ¶ 217.

form of price discrimination and prior to favorably considering Verizon's request for Section 271 authority in Maryland, the District of Columbia and West Virginia, the Commission should clarify that Verizon may not refuse to provide CLECs with cost-based UNE dedicated transport to use for interconnection trunking.

In addition, the Commission must preclude any Verizon requirement that a CLEC must collocate in every Verizon central office to be able to obtain TELRIC prices for dedicated transport facilities. There are many central offices where the traffic volume may not warrant the cost of collocation. The Commission has noted that "collocating in each end office imposes materially greater costs on requesting carriers than would the purchase of the incumbent's interoffice transport facilities."[66] The Commission has also noted that a CLEC will face non-recurring charges that range from $15,000 to $508,000 to provision physical collocation arrangements in a central office.[67] This would be in addition to the cost of the equipment that the CLEC would have to deploy in the collocation arrangement, such as fiber distribution panels, optical terminating equipment, multiplexers, digital cross connects, test access equipment, digital loop carrier equipment, power distribution panels, and cable racks.[68] Requiring CLECs to collocate in every central office to obtain TELRIC prices for dedicated transport would eviscerate the benefits of unbundling dedicated transport, and Verizon must be precluded from imposing unnecessary and unwarranted requirements that would impede such CLEC access.

This issue was squarely addressed in the *Virginia Arbitration Order*, where the Commission rejected Verizon's position that AT&T was not entitled to purchase interoffice

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66 *UNE Remand Order* at ¶ 357.

67 *Id.*

68 *Id.* at ¶¶ 356-357, n. 702.

transmission facilities at UNE rates unless those facilities terminated in an AT&T collocation arrangement. The Commission found that "[t]here is no requirement that a competitive LEC collocate at the incumbent LEC's wire center or other facility in order to purchase UNE dedicated transport, and Verizon offers no support for its contrary position."[69] In light of this ruling and for the reasons stated herein, the Commission should prohibit Verizon from imposing any collocation requirement on the purchase of dedicated transport at UNE rates as a condition of any favorable action on the Application.

B. Any Verizon Attempt to Increase Dedicated Transport Costs by Charging Unwarranted Entrance Facility Rates Must be Rejected

To the extent that Verizon is charging for any entrance facilities rate element that unjustifiably increases UNE rates above TELRIC-based rates in the jurisdictions covered by the Application, it should be prohibited from doing so prior to the award of Section 271 authority. As Starpower's affiliate RCN Telecom Services, Inc. explained in its *Triennial Review* Comments, Verizon's New York affiliate recently added a new entrance facilities rate element for dedicated transport that it has not previously included in the UNE rates charged to CLECs, and which was not the subject of any substantive review by the New York Public Service Commission to determine the propriety of the rate. Instead, Verizon New York filed a compliance tariff on February 19, 2002, following the conclusion of Commission UNE rate Case 98-C-1357, which included a new entrance facilities rate element in addition to the fixed and per mile monthly charges that had previously comprised the dedicated transport rate.[70]

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69 *Virginia Arbitration Order* at ¶ 217.

70 The new rate element, which actually consists of two components, a fixed monthly charge and a per ¼ mile monthly charge, would effectively double the rates previously charged to CLECs.

Starpower is concerned that Verizon's rate structures in the jurisdictions at issue may similarly include unwarranted entrance facilities charges. Although entrance facilities appear to be separate rate elements in the UNE rate structures in effect in those jurisdictions, it is not apparent that any substantive analysis of the propriety of an entrance facilities rate element was undertaken by the respective commissions before effectuating the rate structure. The inclusion of entrance facility charges may significantly increase the cost of dedicated transport in violation of TELRIC principles and could thus impair CLECs' ability to obtain the UNEs necessary to provide their intended services. Accordingly, the Commission in this proceeding should not allow Verizon to impose this rate structure for interoffice transport absent a determination that entrance facilities charges are warranted.

Starpower raised this issue in the Virginia Section 271 proceeding, and the Commission declined to scrutinize the entrance facility rate element in that case.[71] Starpower urges the Commission to do so in the context of the current Application, and to require Verizon to justify its entrance facility rates before any favorable consideration is given.

IV. VERIZON DOES NOT COMPLY WITH CHECKLIST ITEM 13 BECAUSE IT REFUSES TO PAY RECIPROCAL COMPENSATION ON VIRTUAL FOREIGN EXCHANGE TRAFFIC

Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."[72] Section 252(d)(2)(A) provides that "a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with

[71] *Virginia 271 Order* at ¶ 133.

[72] 47 U.S.C. § 271(c)(2)(B)(xiii).

the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier . . . ."[73]

Virtual foreign exchange service involves the ability of callers from another Verizon rate center to reach a CLEC FX customer without incurring toll charges.[74] As is the case with GRIPS, the Commission considered this issue at length in the *Virginia Arbitration Order*. In regard to virtual FX traffic, the Commission noted that Verizon "has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes."[75] Under the current system, Verizon itself concedes that it is obligated to pay reciprocal compensation for virtual FX calls.[76] Verizon then clearly has no basis to exclude from the list of available arrangements the payment of reciprocal compensation on virtual FX traffic. The Model Interconnection Agreements for Maryland, the District of Columbia and West Virginia all contain provisions excluding reciprocal compensation for virtual FX traffic.[77] Until Verizon makes available language providing for such compensation, Verizon fails to meet the requirements of Checklist Item 13.

V. VERIZON'S INADEQUATE NUMBER PORTABILITY PROCESS VIOLATES CHECKLIST ITEM 11

Pursuant to the requirements of Checklist Item 11, 47 U.S.C. 47 U.S.C. § 271(c)(2)(B)(xi), Verizon is required to implement number portability. Verizon claims that it is

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[73] 47 U.S.C. § 252(d)(2)(A).

[74] *Virginia Arbitration Order* at ¶ 301.

[75] *Virginia Arbitration Order* at ¶ 301.

[76] *Virginia Arbitration Order* at ¶ 286.

[77] Application, Md. Appendix P, Tab 2 at 67, Interconnection Attachment, Section 7.2.1; Application, DC Appendix I, Tab 1 at 62, Interconnection Attachment, Section 7.2.1; Application, W.Va. Appendix I, Tab 1 at 67, Interconnection Attachment, Section 7.2.1.

doing so in a manner that satisfies its legal obligations.[78] However, Starpower has experienced a troubling and anticompetitive situation with regard to the porting of numbers from customers who have Verizon voice service and are receiving DSL service and who wish to switch to Starpower's local voice services (and, in many cases, other Starpower services as well). When Starpower obtains such a customer and submits an order to Verizon for number portability, the order is bounced from Verizon's system instead of being processed in the same manner as are other orders. Starpower is then required to request that the customer contact Verizon to request that its service be terminated so that the customer can receive Starpower's service.

Moreover, the information available to Starpower from the customer service record does not reveal whether Verizon is the provider of DSL service to the end user or whether Verizon is providing line sharing to a CLEC that in turn provides DSL service to the end user or to an ISP that provides service to the end user. In any event, Starpower is forced to endure significant provisioning delays without explanation that can extend for at least thirty (30) days, which increases the risk that it will lose the customers whose choice of service providers is not being promptly implemented. Verizon is thereby given an opportunity to attempt to win the customers back before the numbers have been ported. CLEC requests for number portability of customers who currently have DSL and voice service should be handled in the ordinary course, similar to the treatment of a request from a customer who has several Verizon voice lines and who wishes to transfer one of the lines to a CLEC's voice service. Verizon's practices are anticompetitive and its ordering process should be remedied before any favorable action is taken on the Application.

78 Application at 76-77.

VI. VERIZON'S APPLICATION IS NOT IN THE PUBLIC INTEREST

A. The Standard

Under Section 271(d)(3)(C) of the Act, the Commission may not grant Section 271 authorization unless it is consistent with the "public interest, convenience and necessity."[79] The public interest standard was intended to mirror the broad public interest authority the Commission had been given in other areas.[80] The legislative history of the 1996 Act evidences an unequivocal intent on the part of Congress that the Commission "in evaluating section 271 applications . . . perform its traditionally broad public interest analysis of whether a proposed action or authorization would further the purposes of the Communications Act."[81] As a Senate Report noted, the public interest standard is "the bedrock of the 1934 Act, and the Committee does not change that underlying premise through the amendments contained in the bill."[82] The Report went on to add that "in order to prevent abuse of [the public interest standard], the Committee has required the application of greater scrutiny to the FCC's decision to invoke that standard as a basis for approving or denying an application by a Bell operating company to provide interLATA services."[83]

The Commission recognized the huge import that Congress placed on the public interest standard by crafting a strong definition of the standard in the Section 271 context. The Commission noted that under the standard it was given "broad discretion to identify and weigh

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79 47 U.S.C. § 271(d)(3)(C).

80 *See* 47 U.S.C. § 241(a); § 303; § 309(a); § 310(d).

81 *In the Matter of the Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298, ¶ 385 (1997) ("*Ameritech Michigan 271 Order*").

82 *Id.* at n. 992, *quoting*, S. Rep. Mo. 23, 104th Cong., 1st Sess. 44 (1995).

83 *Id.*

all relevant factors in determining whether BOC entry into a particular in-region market is consistent with the public interest."[84] The Commission determined that as part of this broad authority it should consider factors relevant to the achievement of the goals and objectives of the 1996 Act.[85] The Commission explicitly recognized that "Congress did not repeal the MFJ in order to allow checklist compliance alone to be sufficient to obtain in-region, interLATA authority."[86]

Predictably, the BOCs initially attempted to dilute the public interest standard. For instance, BellSouth argued that the public interest requirement is met whenever a BOC has implemented the competitive checklist.[87] BellSouth also contended that the Commission's responsibility to evaluate public interest concerns is limited narrowly to assessing whether BOC entry would enhance competition in the long distance market.[88] The Commission rejected both of these claims and reaffirmed that it will consider "whether approval of a section 271 application will foster competition in all relevant telecommunications markets (including the relevant local exchange market), rather than just the in-region, interLATA market."[89] The Commission stated that it would not be satisfied that the public interest standard has been met unless there is an adequate factual record that the "BOC has undertaken all actions necessary to assure that its local telecommunications market is, and will remain, open to competition."[90] As

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84 *Ameritech Michigan 271 Order* at ¶ 383.

85 *Id.* at ¶ 385.

86 *Id.*

87 *Second Louisiana Order,* at ¶ 361.

88 *Id.*

89 *Id.* Congress rejected an amendment that would have stipulated that full implementation of the checklist satisfies the public interest criterion. *Ameritech Michigan 271 Order* at ¶ 389.

90 *Ameritech Michigan 271 Order* at ¶ 386.

the Department of Justice notes, in-region interLATA entry by a BOC should be permitted only when the local markets in a state have been "fully and irreversibly" opened to competition.[91]

Senators Burns, Hollings, Inouye, and Stevens reaffirmed the importance of the public interest standard in a letter to Chairman Powell.[92] In that letter the Senators stated that:

> [t]he public interest requirements were added to Section 271 to ensure that long distance authority would not be granted to a Bell company unless the commission affirmatively finds it is in the public interest. Meaningful exercise of that authority is needed in light of the current precarious state of the competitive carriers which is largely due to their inability to obtain affordable, timely, and consistent access to the Bell networks.[93]

The Commission has traditionally focused on both the current state of competition in a particular market and assurances of future compliance to ensure future competition in evaluating the public interest standard.[94]

More recently, however, the Commission has weakened the public interest standard and has adopted positions consistent with the BOC attempts to subsume the public interest analysis under considerations of checklist compliance. In the *Georgia/Louisiana 271 Order*, the Commission virtually tied approval to checklist compliance: "[A]lthough the Commission must make a separate determination that approval of a section 271 application is 'consistent with the

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[91] *In the Matter of Application of Verizon Pennsylvania, Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania,* CC Docket No. 01-138, Evaluation of the United States Department of Justice at 2 (July 26, 2001); *see also, Ameritech Michigan 271 Order* at ¶ 382.

[92] Letter from Senators Conrad Burns, Ernest F. Hollings, Daniel K. Inouye, Ted Stevens to The Honorable Michael K. Powell, Chairman, Federal Communications Commission (April 17, 2001).

[93] *Id.* at 3.

[94] *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma,* CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29, (Jan. 22, 2001) ¶¶ 266-281 ("*SWBT Kansas/Oklahoma 271 Order*").

public interest, convenience, and necessity,' it may neither limit nor extend the terms of the competitive checklist of section 271(c)(2)(B)."[95]

Further, the Commission has given applicants substantial latitude in demonstrating such checklist compliance. The Commission has allowed applicants to incorporate interconnection terms and conditions,[96] rates,[97] and even performance data[98] from another state to demonstrate checklist compliance in a particular state. The Commission has also increasingly allowed applicants to rely on promises of future compliance,[99] and has waived the "complete as filed" requirement in further dilution of the vigor of the checklist.[100] As a result, the checklist has increasingly become a formula where if the applicant can plug in the correct inputs it can obtain Section 271 authority.

The Commission has determined that this latitude is warranted. Starpower and US LEC are not here to second-guess that determination, but to merely reiterate that this is all the more reason for a viable public interest standard. With the mounting number of metrics to consider, it is inevitable that the process will only continue to grow more mechanistic. As checklist

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[95] *Georgia/Louisiana 271 Order* at ¶ 280.

[96] *SWBT Kansas/Oklahoma 271 Order* at ¶ 35.

[97] *See id.* at ¶ 82, n. 244.

[98] *See id.* at ¶¶ 35-38.

[99] *See Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Dissenting Opinion of Commissioner Michael J. Copps at 8 (September 19, 2001).

[100] *See Application by Qwest Communications International, Inc., for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming,* Docket No. 02-314, Memorandum Opinion and Order, FCC 02-333 (December 23, 2002) ¶¶ 176-180; *.Application by SBC Communications, Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Authorization to Provide In-Region, InterLATA Services in California,* Docket No. 02-306, Memorandum Opinion and Order, FCC 02-330 (December 19, 2002) ¶¶ 26-31.

compliance becomes more mechanistic, it is all the more important that a viable public interest standard be preserved.

The public interest standard will enable the Commission to look beyond the numbers and look at the qualitative aspects of the application. The Commission will be able to consider if the application, when looked at as a whole, truly promotes competition and is in the public interest.

Promoting CLEC market entry should be a paramount goal of the Commission. Competitive entry into local markets promotes increased choices for end users and promotes innovation and demand for services. For instance, CLECs have fueled the growth of advanced services and broadband deployment by deploying state-of-the-art networks. Prior to competitive entry, the BOCs were disinterested in advanced services and broadband deployment;[101] now they fill airwaves advocating greater broadband deployment. The Act was intended to provide for a "pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[102] The goal of promoting competition was to "secure lower prices and higher quality services for American telecommunications consumers."[103] As the House Commerce Committee Report noted:

> Technological advances would be more rapid and services would be more widely available and at lower prices if telecommunications markets were competitive rather than regulated monopolies.[104]

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[101] In a White Paper released in September 2001, the Deputy General Counsel of Verizon explained how Verizon resists deploying state-of-the-art facilities in a competitive market before Verizon has recouped its investment in its more traditional facilities. John Thorne, "The 1996 Telecom Act: What Went Wrong and Protecting the Broadband Buildout" (Sep. 2001) at 13-14. Carriers entering the market for the first time would be much more likely to deploy facilities using the most recent technological advances throughout their network.

[102] P.L. 104-104, Telecommunications Act of 1996, S. Conf. Rep. 104-230 at 1 (1996).

[103] P.L. 104-104, H.R. Rep. 104-204(I) at 160 (1995).

[104] *Id.*

Competitive entry into markets has helped make the goals a reality, and the Commission has played a significant role in effecting these goals. However, the Commission cannot ignore those goals now.

The Commission cannot deny that local competition is imperiled and that competitive exit from local markets is not in the public interest. For this reason, the Commission should reconsider this misguided statement from the *Georgia/Louisiana 271 Order*:

> Given an affirmative showing that the competitive checklist has been satisfied, low customer volumes or the financial hardships of the competitive LEC community do not undermine that showing. We have consistently declined to use factors beyond the control of the BOC, such as the weak economy, or over-investment and poor business planning by competitive LECs to deny an application.[105]

This statement indicates an almost complete abandonment of any public interest standard. Checklist compliance is a requirement, but it is not the only requirement for section 271 approval. The Commission must consider BOC applications within the context of the current telecommunications industry. The CLECs that remain in business provide the only hope for intramodal competition in local markets as BOCs have been refusing to compete in each other's regions. With the long distance industry in turmoil, and the increasing possibility that now two of the large three long distance carriers, particularly WorldCom and perhaps even AT&T, will be purchased by a BOC, the vision for the 21st century is fast becoming a return to the pre-1980s America.

The 1996 Act was designed to provide end users with a number of competitive choices and services. As Commissioner Copps has stated:

[105] *Georgia/Louisiana 271 Order* at ¶ 282.

> The combination of competitive BOC entry into the interLATA market and competitive local exchange carrier (CLEC) entry into the BOC's once-dominant local market, Congress believed, would lead to significant consumer benefits in the form of lower prices, better service, and investment in new technologies. Continued BOC dominance of a state's local market, however, could undermine consumer benefits if the BOC could leverage this dominance upon entering the interLATA market.[106]

If the Commission allows the Section 271 process to continue to be diluted, end users will be seeing a landscape dominated by the BOCs each seeking to maintain their monopolies in their regions. The Commission was given the ability to prevent such a scenario through use of the public interest standard. The Commission should employ this standard to ensure that local markets are irreversibly open to competition. The steady erosion of the separation between checklist compliance and satisfaction of the public interest standard must be reversed. Given the state of the competitive telecom industry, and the BOC efforts to thwart the local competition provisions of the Telecom Act, granting Verizon Section 271 authority in Maryland, Washington, D.C. and West Virginia is clearly not in the public interest, and Verizon's Application should be denied.

B. The Danger of Premature Entry

The Commission should also be vigilant to ensure against the danger of a premature grant of Section 271 authority. If a BOC is allowed into the long distance arena before a local market is irreversibly open, local competition will not develop, and long distance competition could be imperiled.[107] As Dr. Mark N. Cooper of the Consumer Federation of America noted:

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106 *Pennsylvania Order*, Dissenting Opinion of Commissioner Michael J. Copps at 1 (September 19, 2001).

107 *Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks, Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks, Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Services, Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange*

> [t]he risk that arises from a rush to approve the 271 is that the incumbent can exploit the anticompetitive conditions, or 'competitive imbalance,' in the critical early days of the bundled telecommunications market. It can then rapidly capture long distance customers by bundling local and long distance service, while competitors are unable to respond with a competitively priced bundle. Allowing premature entry will cause the CLEC industry to shrink, as RBOCs capture long distance market share. The incentive to open the local market will be eliminated.[108]

As the Commission has also noted:

> Section 271, however embodies a Congressional determination that, in order for this potential to become a reality, local telecommunications markets must first be open to competition so that a BOC cannot use its control over bottleneck local exchange facilities to undermine competition in the long distance market. Only then is the other congressional intention of creating an incentive or reward for opening the local exchange market met.[109]
>
> While a BOC's entry into the long distance market may have pro-competitive effects, those benefits are only sustainable if the local telecommunications market is open to competition after BOC entry.[110]

Verizon's discriminatory and anticompetitive conduct in the areas addressed in these Comments will only serve to preclude the development of viable competition in Maryland, Washington, D.C., and West Virginia. The Commission should note the lukewarm endorsement given to Verizon by the Maryland PSC. It should also consider that even though the Application was filed before the District of Columbia PSC released any findings in its pending Section 271 proceeding, that Commission felt compelled to issue an order on January 6, 2003, that denounced Verizon's conduct relating to DC UNE rates.

Service, California Public Utilities Commissions Docket Nos. R.93-04-003, I.93-04-002, R.95-04-043, I.95-04044, Comments of Dr. Mark N. Cooper for the Consumer Federation of America on Public Interest Issues at 16 (Aug. 23, 2001).

108 *Id.*

109 *Ameritech Michigan 271 Order* at ¶ 388.

110 *Id.* at ¶ 390.

Although the Maryland PSC found that Verizon "currently is technically in compliance" with the Section 271 checklist, it expressed numerous qualifications regarding Verizon's GRIPs, "no-build," and dark fiber policies, along with a host of concerns relating to line sharing, metrics replication, directory listings, and other issues.[111] Significantly, the Maryland PSC stated its reservations about the public interest issue and noted that "this Commission is greatly concerned about the State of Maryland's inability to build upon the initial gains achieved in opening the local market to competition and the apparent sluggish nature of local competition growth."[112] The multiple deficiencies identified by the Maryland PSC and those described herein demonstrate that the award of Section 271 authority at this time would be premature.

In addition, the DC PSC issued an extraordinary ruling on January 6, 2003, regarding Verizon's intention to disregard the recently ordered DC UNE rates pending its request for reconsideration of the rates.[113] The Application includes Verizon's unilateral declaration that it will charge "the lower of (1) the recurring or non-recurring rate that was in effect in the District prior to the release of the *DC UNE Order*, or (2) the New York equivalent rate, adjusted where possible to reflect relative costs in New York and the District, as predicted by the Commission's USF Cost Model."[114] In response, the DC PSC unequivocally stated that "there is no law, rule, regulation, or policy under which Verizon DC may implement rates of its choosing without

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111 *See Letter from Felecia L. Greer, PSC Secretary, to William R. Roberts, President, Verizon Maryland, Inc.*, Case 8921 (Md. PSC Dec. 17, 2002) at 1; *Letter from Maryland PSC Commissioners to William R. Roberts,* Case 8921 (Md. PSC Dec. 16, 2002) at 3-9.

112 *Letter from Maryland PSC Commissioners to William R. Roberts,* Case 8921 (Md. PSC Dec. 16, 2002) at 2. *See Id.* ("The Commission notes a number of concerns that must be addressed before the Commission can say that Verizon's entry into the Maryland long distance market is in the public interest").

113 *In the Matter of Verizon Washington DC's Compliance with the Conditions Established in Section 271 of the Federal Telecommunications Act of 1996*, Case No. 1011, Order No. 12626 (D.C. PSC Jan. 6, 2003) (*"Second DC UNE Rate Order").*

114 *Application* at 57.

Commission approval."[115] The DC PSC ruled that "any attempt by Verizon to flout an Order of the Commission may constitute sufficient reason to recommend to the FCC that the company's Section 271 application be denied."[116]

Verizon's brazen conduct plainly demonstrates that the Application is not in the public interest. Its wholly unjustified attempt to ignore the rates set by the DC PSC and implement rates that it alone has selected will hardly facilitate the development of local competition within the District of Columbia. Verizon's anticompetitive antics counsel against the granting of the Application, and the Commission should deny it.

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115 *Second DC UNE Rate Order* at 3.

116 *Second DC UNE Rate Order* at 3.

VII. CONCLUSION

For the foregoing reasons, US LEC Corp. and Starpower Communications, LLC urge the Commission to deny Verizon's Application for Provision of In-Region InterLATA Services in Maryland, Washington, D.C., and West Virginia.

Respectfully submitted,

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Dated: January 9, 2003

CERTIFICATE OF SERVICE

I, Harisha Bastiampillai, hereby certify that on January 9, 2003, I caused to be served upon the following individuals the Comments of Starpower Communications, LLC and US LEC Corp. and supporting materials in WC Docket No. 02-384.

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